



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/173291

PRELIMINARY RECITALS

Pursuant to a petition filed March 31, 2016, under Wis. Admin. Code, §HA 3.03, to review a decision by Brown County Human Services to recover FoodShare benefits (FS), a hearing was held on April 27, 2016, at Green Bay, Wisconsin, with the judge appearing by telephone.

The issue for determination is whether the county correctly determined an FS overpayment based on the failure to report income.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Brown County Human Services
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. Petitioner's wife applied for FS on October 17, 2013. She reported that petitioner worked for [REDACTED], and FS of \$632 monthly were approved based upon the income from that job.
3. Petitioner also worked for a company called [REDACTED]. That job was not reported. The county later discovered the [REDACTED] income in a state wage match.

4. Based upon the [REDACTED] income, the county determined that the household would have received less FS than it received. The county worker determined that the [REDACTED] income converted to \$940.09 per month.
5. By a notice dated March 15, 2016, the county informed petitioner that he and his wife were liable for a \$1,849 FS overpayment from October 17, 2013 through March 31, 2014, claim no. [REDACTED]. The overpayment ended because the [REDACTED] job ended March 25, 2014, and for the months thereafter the only income counted was the reported amount from [REDACTED]. See Exhibit 4 for the calculations.
6. Petitioner's income from [REDACTED] went down in 2014. In January through March, 2014 his average monthly income was \$594.67.

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii). The agency should use "converted income" to determine the overpayment. FS Handbook, App. 7.3.2.1. Converted income is the monthly amount obtained after multiplying weekly income by 4.3. See the Department's Process Help Manual, §16.4.3.

Ms. [REDACTED], who processed the overpayment, used September income and "converted" it to \$940.09 monthly, which is what a worker would have done when the application was processed if the [REDACTED] job had been reported. She then used that same \$940.09 through the end of the overpayment.

The converted amount fit perfectly for the months of October through December, 2013. There was a three-paycheck month in November, and as a result monthly income in those months averaged almost precisely the \$940 converted amount. I am troubled by the continued use of the \$940 monthly amount for January through March, however, because petitioner's income from [REDACTED] went down substantially in January. As noted in Finding of Fact no. 6, the average income for the first three months of 2014 was \$594.67, almost \$350 less than the converted amount.

It could be argued that the lesser amount should not be allowed because petitioner or his wife never reported the income, so thus they also did not report the reduction in income. However, I find that using \$940 per month income in the 2014 months is overly punitive when the actual average was so much less.

I recalculated the months of January through March using \$594.67 as the [REDACTED] income. The \$74 March overpayment stays the same as even with the reduced income the household would not have been eligible for FS. However, for the other two months the household would have been eligible for \$418 FS instead of the \$263 calculated using the higher amount. That would reduce the overpayment for each of those two months to \$214 instead of the \$369 originally calculated.

Here are my calculations:

Unreported Income	\$594.67
Reported Income	<u>\$779.22</u>

Gross Income	\$1,373.89	
Earned Inc. Deduction	(\$155.84)	
Standard Deduction	<u>(\$163.00)</u>	
Adjusted Income	\$1,055.05	Shelter Expense \$750
		½ Adj. Inc. <u>(\$527.53)</u>
		Shelter Deduct. \$222.47
Shelter Deduction	<u>(\$222.47)</u>	
Net Income	\$832.58	
Maximum FS Allotment	\$668	
30% of Net Income	<u>(\$249.77)</u>	
Correct FS amount	\$418	

The \$632 actually issued minus the \$418 correct issuance leaves a \$214 overpayment. Therefore, I will order that the overpayment be reduced by \$310 ($\$369 - \214×2), to \$1,539, to reflect the lower income amounts after January 1, 2014.

CONCLUSIONS OF LAW

Petitioner's household was overpaid FS from October, 2013 through March, 2014 because income was not reported, but the overpayment amount was less than originally calculated in January and February, 2014 because the unreported income was substantially reduced from the monthly amounts in late 2013.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to amend overpayment claim no. [REDACTED] to be \$1,539 due to reductions in months of January and February, 2014. The county shall do so within 10 days of this decision. In all other respects the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 4th day of May, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 4, 2016.

Brown County Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability